

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STRATAS FOODS LLC,
Plaintiff,

v.

J.B. CUSICK COMPANY, INC.,
Defendant.

Case No. 2:24-cv-02414-CSK

ORDER AND FINDINGS AND
RECOMMENDATIONS GRANTING
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT

(ECF No. 12)

Pending before the Court is Plaintiff Stratas Foods LLC's motion for default judgment pursuant to Federal Rules of Civil Procedure 55(b)(2).¹ (ECF No. 12.) This motion was set for hearing for April 22, 2025. (ECF No. 14.) Defendant J.B. Cusick Company, Inc. did not file a response to the motion, nor have they appeared in this case in any way. On May 5, 2025, Plaintiff's motion was taken under submission without argument pursuant to Local Rule 230(g). (ECF No. 17.) For the reasons stated below, the Court recommends Plaintiff's motion for default judgment be GRANTED, and that judgment be entered in favor of Plaintiff.

¹ This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and Local Rule 302(c)(19).

I. BACKGROUND

A. Factual Background

Plaintiff is a supplier of fats, oils, mayonnaise, dressings, and sauces. Compl. ¶ 10 (ECF No. 1). Defendant is a food brokerage business that supplies its customers with dried fruits, nuts, and seeds. *Id.* ¶ 11. On October 17, 2022, Plaintiff and Defendant entered into a Credit Application, where Defendant agreed “to pay all bills within the stated terms on each invoice, and if not paid on or before said due date are then considered to be delinquent.” *Id.* ¶¶ 12, 14; see Compl. Exh. 1 (ECF No. 1-1 at 2). The Credit Application also states that Defendant “shall be responsible for all collection costs including attorney’s fees and court costs, if any, in connection with the delinquent account.” Compl. ¶ 15; see Compl. Exh. 1.

Between May and June 2024, Plaintiff delivered oil to Defendant and issued three invoices totaling \$198,936.00. Compl. ¶¶ 16, 17; see Compl. Exh. 2 (ECF No. 1-2 at 2-4).

Plaintiff alleges that Defendant accepted delivery of the goods identified in the invoices and received the invoices at or around the time of the invoice dates, but did not pay the price of the invoices. Compl. ¶¶ 21-23. Defendant did not object in writing to the terms of the invoices, there were no defects identified, Defendant did not notify Plaintiff about any defects or nonconformities in the goods, and Defendant did not notify Plaintiff that it was rejecting the goods before the case was filed. See *id.* ¶¶ 24-43. Plaintiff alleges Defendant is liable for no less than \$198,936.00, plus prejudgment interest, attorney’s fees, and costs. *Id.* ¶ 44.

B. Procedural Background

Plaintiff filed its Complaint on September 5, 2024 asserting four state law claims: breach of contract, action for the price, account stated, and restitution. Compl. ¶¶ 45-66. On October 31, 2024, Plaintiff filed a motion for alternative service and extension of time to serve process, seeking leave to serve the summons and complaint on Defendant via the California Secretary of State after unsuccessfully attempting to serve Defendant’s

1 registered agent six times. (ECF No. 5.) The Court granted the motion on January 28,
2 2025, directing Plaintiff to serve Defendant through the California Secretary of State.
3 (ECF No. 7.) On January 31, 2025, Plaintiff filed a declaration of service indicating
4 Defendant was served at the California Secretary of State pursuant to the Court's
5 January 28, 2025 order. (ECF No. 8.) After Defendant failed to appear, Plaintiff filed a
6 request for entry of default against Defendant on March 7, 2025. (ECF Nos. 9, 10.) The
7 Clerk of the Court entered default against Defendant on March 11, 2025. (ECF No. 11.)

8 On March 13, 2025, Plaintiff moved for default judgment against Defendant and
9 set the motion for hearing on April 15, 2025 before the undersigned. (ECF No. 12). The
10 Court informed Plaintiff that the motion was deficient and must be re-noticed in
11 compliance with Local Rule 230(b). (ECF No. 13.) Plaintiff reset the hearing for April 22,
12 2025. (ECF No. 14.) Plaintiff served by express overnight delivery the operative motion
13 and supporting documents on Defendant's agent for service of process. (ECF No. 12-9.)
14 Defendant did not respond to the motion for default judgment. See Docket.

15 On April 2, 2025, the Court issued a minute order instructing Plaintiff to serve the
16 motion for default judgment and the Court's minute order on Defendant via the California
17 Secretary of State; vacating the April 22, 2025 hearing; and providing Defendant with
18 another opportunity to respond to the motion. (ECF No. 15.) Plaintiff served the operative
19 motion, supporting documents, and the Court's April 2, 2025 minute order on Defendant
20 via the California Secretary of State on April 3, 2025. (ECF No. 16.) Defendant did not
21 respond to Plaintiff's motion for default judgment or the Court's April 2, 2025 minute
22 order. See Docket. On May 5, 2025, the Court issued an order taking Plaintiff's motion
23 under submission. (ECF No. 17.)

24 **II. LEGAL STANDARDS**

25 Under Federal Rule of Civil Procedure 55, default may be entered against a party
26 against whom a judgment for affirmative relief is sought who fails to plead or otherwise
27 defend against the action. See Fed. R. Civ. P. 55(a). However, this default does not
28 automatically entitle the plaintiff to a judgment. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.

1 Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citations omitted). The decision to grant or deny
2 the entry of default judgment is within the district court's discretion. *NewGen, LLC v.*
3 *Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016).

4 In determining whether to enter default judgment, courts consider the following
5 factors:

- 6 1. the possibility of prejudice to the plaintiff;
- 7 2. the merits of the substantive claim(s);
- 8 3. the sufficiency of the complaint;
- 9 4. the amount of money at stake in the lawsuit;
- 10 5. whether there are any disputes of material fact;
- 11 6. whether the defendant's default was due to excusable neglect; and
- 12 7. the strong policy favoring decisions on the merits.

13 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The Ninth Circuit has long
14 disfavored default judgments, counseling that cases be decided on the merits "whenever
15 reasonably possible." *Id.* at 1472.

16 Once a default is entered, all well-pled allegations in the complaint regarding
17 liability are deemed true. *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir.
18 2002). "On the other hand, a defendant is not held to admit facts that are not well-
19 pleaded or to admit conclusions of law." *United States v. Cathcart*, 2010 WL 1048829, at
20 *4 (N.D. Cal. Feb. 12, 2010) (citation omitted). "[I]t follows from this that facts which are
21 not established by the pleadings of the prevailing party, or claims which are not well-
22 pleaded, are not binding and cannot support the judgment." *Danning v. Lavine*, 572 F.2d
23 1386, 1388 (9th Cir. 1978). Necessary facts not contained in the pleadings and claims
24 which are legally insufficient are not established by default. *DIRECTV, Inc. v. Hoa*
25 *Huynh*, 503 F.3d 847, 854 (9th Cir. 2007). Further, a plaintiff's allegations regarding
26 damages are not deemed true at default, and the plaintiff bears the burden to prove
27 damages with evidence. See Fed. R. Civ. P. 55(b)(2)(C); *Geddes v. United Fin. Grp.*,
28 559 F.2d 557, 560 (9th Cir. 1977).

III. DISCUSSION

Plaintiff brought four claims against Defendant in its Complaint; however, it appears to only move for default judgment as to its breach of contract claim. See Pl. Mot. at 7 (ECF No. 12-1). Therefore, the Court will analyze the motion as to the breach of contract claim only. Plaintiff requests the Court enter judgment in favor of it for \$198,936.00, plus \$17,095.78 in prejudgment interest, and \$538.90 in costs, for a total amount of \$216,570.68. *Id.* at 9.

A. Jurisdiction and Service

As a preliminary matter, a court considering whether to enter default judgment must first determine whether it has jurisdiction over both the subject matter and the parties to the case. *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).

The Court has subject matter jurisdiction over this action pursuant to diversity jurisdiction. 28 U.S.C. § 1332. Plaintiff is a Delaware limited liability company with its principal place of business located in Cordova, Tennessee. Compl. ¶ 2. Plaintiff is a 50/50 joint venture with ownership between Archer Daniels Midland and Associated British Foods. *Id.* ¶ 3. Archer Daniels Midland is a Delaware corporation with its headquarters located in Chicago, Illinois, and Associated British Foods is a British multinational company with its headquarters in London, England. *Id.* ¶¶ 3-5. Defendant is a California corporation with its principal place of business in Chico, California. *Id.* ¶ 6. The amount in controversy, exclusive of interest and costs, exceeds \$75,000. *Id.* at 7.

In addition, the Court has personal jurisdiction over Defendant, a California corporation. See *AM Tr. v. UBS AG*, 681 F. App'x 587, 588 (9th Cir. 2017) (“a corporation is typically subject to general personal jurisdiction only in a forum where it is incorporated or where it maintains its principal place of business”) (citations omitted).

The Court also finds service was proper under Federal Rules of Civil Procedure 4(h)(1). Under California law, a corporation may be served by leaving a copy of the summons and complaint during usual office hours in his or her office, with the person who is apparently in charge, and by mailing a copy of the summons and complaint by

1 first class mail. Cal. Civ. Proc. § 416.20(a). A corporation may also be served through
2 the California Secretary of State upon reasonable exhaustion of other provisions. Cal.
3 Corp. Code § 1702(a); see Fed. R. Civ. P. 4(h) (corporation may be served in federal
4 judicial district in manner for serving individual as provided by Rule 4(e)(1)); Fed. R. Civ.
5 P. 4(e)(1) (individual may be served by following state law provisions for serving
6 summons in state court). Here, Plaintiff attempted to serve Defendant at its registered
7 agent's address listed with the California Secretary of State six times, and ultimately
8 mailed the documents via first-class mail with pre-paid postage. Pl. Mot. Alt. Service at 4
9 (ECF No. 5-1); Pl. Mot. Alt. Service Exh. 2 (ECF No. 5-4). Pursuant to the Court's
10 January 28, 2025 order, Plaintiff also served Defendant via the California Secretary of
11 State. (ECF No. 8; see ECF No. 7.)

12 **B. *Eitel* Factors**

13 For the following reasons, the Court finds that the *Eitel* factors weigh in favor of
14 granting default judgment against Defendant as to the breach of contract claim.

15 1. Factor One: The Possibility of Prejudice to the Plaintiff

16 The first *Eitel* factor considers whether the plaintiff would suffer prejudice if default
17 judgment were not entered, and such potential prejudice to the plaintiff weighs in favor of
18 granting a default judgment. See *PepsiCo*, 238 F. Supp. 2d at 1177. Here, the Clerk of
19 the Court entered default against Defendant on March 11, 2025 (ECF No. 11), and
20 Defendant has not participated in the litigation despite being served with the Complaint,
21 default judgment motion, and the Court's April 2, 2025 minute order. See Docket.
22 Plaintiff would suffer prejudice if the Court did not enter a default judgment because it
23 would be without recourse for recovery. Accordingly, the first *Eitel* factor favors the entry
24 of default judgment.

25 2. Factors Two and Three: The Merits of the Claim and the Sufficiency
26 of the Complaint

27 The merits of Plaintiff's substantive claim and the sufficiency of the Complaint are
28 considered together due to the relatedness of the two inquiries. The Court must consider

1 whether the allegations in the Complaint are sufficient to state a claim that supports the
2 relief sought. See *Danning*, 572 F.2d at 1388; *PepsiCo, Inc.*, 238 F. Supp. 2d at 1175.
3 As stated above, the Court is only considering Plaintiff's breach of contract claim
4 because that is the only claim upon which Plaintiff seeks default judgment. See Pl. Mot.
5 Here, the merits of the claim and the sufficiency of the Complaint favor entry of default
6 judgment.

7 Federal courts ordinarily apply state law in diversity cases involving contract
8 disputes. *JAE Properties, Inc. v. AMTAC Holdings 2001-XX, LLC*, 716 F. Supp. 3d 918,
9 937 n.17 (S.D. Cal. 2024) (citing *Reliance Finance Corp. v. Miller*, 557 F.2d 674 (9th Cir.
10 1977)); see *Dean v. United of Omaha Life Ins.*, 2007 WL 7079558, at *3 (C.D. Cal. Aug.
11 27, 2007). Though the Credit Application does not contain a choice of law provision,
12 Plaintiff applies California law in their motion for default judgment. See Pl. Mot. at 3. The
13 goods at issue were sold to a California corporation, shipped to a location in California,
14 and a substantial part of the events giving rise to Plaintiff's claim occurred in California.
15 See Compl. ¶¶ 6, 9; Compl., Exh. 2 (ECF No. 1-2 at 2-4). Accordingly, the Court will also
16 apply California law. To prevail on a breach of contract claim under California law, a
17 plaintiff must establish: "(1) the existence of the contract, (2) plaintiff's performance or
18 excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to
19 the plaintiff." *Oasis W. Realty, LLC v. Goldman*, 51 Cal.4th 811, 821 (2011). Here,
20 Plaintiff has sufficiently alleged a claim for breach of contract under California law. The
21 Complaint sufficiently alleges Plaintiff entered into a valid agreement with Defendant as
22 to the Credit Application, and that three invoices were issued pursuant to the Credit
23 Application. Compl. Exhs. 1, 2; see Compl. ¶ 14. Plaintiff alleges it performed its
24 obligations concerning the goods at issue in the invoices and Defendant failed to pay for
25 the goods, thereby damaging Plaintiff. Compl. ¶¶ 46, 49, 50-51. Plaintiff further alleges
26 that Defendant ordered goods from Plaintiff, and Plaintiff issued invoices to Defendant
27 between May and June 2024 for those goods. *Id.* ¶¶ 17, 18. Plaintiff alleges that it
28 delivered the goods ordered to Defendant, Defendant accepted delivery of the goods,

1 did not pay for the goods, and did not object to the terms of the invoices. *Id.* ¶¶ 20-25.
2 There were no defects or nonconformities in the goods identified, Defendant had the
3 opportunity to inspect the goods when they were delivered, and Defendant did not notify
4 Plaintiff that it was rejecting any of the goods before this case was filed. *Id.* ¶¶ 26-37.
5 Accordingly, Plaintiff has sufficiently pled a meritorious breach of contract claim.

6 3. Factor Four: The Sum of Money at Stake in the Action

7 Under the fourth *Eitel* factor, the Court considers the amount of money at stake in
8 relation to the seriousness of Defendant's conduct. *PepsiCo*, 238 F. Supp. 2d at 1176.
9 The sum of money at stake here is reasonable as it is directly connected to the invoices
10 and respective breaches. Accordingly, the fourth *Eitel* factor favors the entry of default
11 judgment.

12 4. Factor Five: The Possibility of Dispute Concerning Material Facts

13 The facts of this case are relatively straightforward, and Plaintiff has provided the
14 Court with well-pleaded allegations and documentation supporting its claims. See
15 *generally* Compl. Here, the Court may assume the truth of well-pleaded facts in the
16 complaint (except as to damages) following the clerk's entry of default, and thus, there is
17 no likelihood that any genuine issue of material fact exists. See, e.g., *Elektra Entm't*
18 *Group Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005) ("Because all allegations
19 in a well-pleaded complaint are taken as true after the court clerk enters default
20 judgment, there is no likelihood that any genuine issue of material fact exists."); *accord*
21 *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 500 (C.D. Cal. 2003);
22 *PepsiCo*, 238 F. Supp. 2d at 1177. Accordingly, the fifth *Eitel* factor favors the entry of
23 default judgment.

24 5. Factor Six: Whether Default was Due to Excusable Neglect

25 Upon review of the record before the Court, there is no indication that the default
26 was the result of excusable neglect. See *PepsiCo*, 238 F. Supp. 2d at 1177. Plaintiff
27 served Defendant with the summons and the Complaint. (ECF No. 8.) Plaintiff also
28 served Defendant with its motion for default judgment and with the Court's April 2, 2025

minute order. Pl. Mot. Exh. 9; ECF No. 16. Despite ample notice of this lawsuit and Plaintiff's intention to seek a default judgment, Defendant has failed to participate in this action or to defend itself. Accordingly, the sixth *Eitel* factor favors the entry of default judgment.

6. Factor Seven: The Strong Policy Favoring Decisions on the Merits

"Cases should be decided upon their merits whenever reasonably possible." *Eitel*, 782 F.2d at 1472. Although the Court is cognizant of the policy favoring decisions on the merits, that policy does not, by itself, preclude the entry of default judgment where a defendant fails to appear or defend itself in an action. See *PepsiCo*, 238 F. Supp. 2d at 1177; see also *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1061 (N.D. Cal. 2010).

7. Conclusion

Upon consideration of the *Eitel* factors, the Court concludes that Plaintiff is entitled to the entry of default judgment against Defendant as to its breach of contract claim. The Court next determines the amount of damages to which Plaintiff is entitled.

C. Terms of Judgment

1. Principal

As to damages, the principal amount of damages corresponds to the invoices, and \$198,936.00 is the appropriate amount of compensatory damages. ECF No. 12-6.

2. Prejudgment Interest

Prejudgment interest is a substantive part of a plaintiff's claim, and state law generally governs the award of prejudgment interest in diversity actions. *Oak Harbor Freight Lines, Inc. v. Sears Roebuck & Co.*, 513 F.3d 949, 961 (9th Cir. 2008). Prejudgment interest is meant to compensate the plaintiff for the "accrual of wealth" that could have been produced during the period of loss. *Great W. Drywall, Inc. v. Roel Const. Co.*, 166 Cal. App. 4th 761, 767-68 (2008). California law provides for interest at a rate of 10% per annum in contract cases after a breach. Cal. Civ. Code § 3289(b).

Plaintiff seeks to recover prejudgment interest at the rate of 10% per annum

consistent with California law. Pl. Mot. at 9. Plaintiff seeks a total of \$17,095.78 in prejudgment interest. See Pl. Mot., Exh. 3 (ECF No. 12-7). Plaintiff calculates the prejudgment interest as follows:

Invoice Date	Invoice Amount	Rate	Daily Rate	# of Days	Estimate	Interest on Invoice
5/20/2024	\$66,312.00	10.0%	\$18.17	330	4/15/2025	\$5,995.33
6/3/2024	\$66,312.00	10.0%	\$18.17	316	4/15/2025	\$5,740.98
6/24/2024	\$66,312.00	10.0%	\$18.17	295	4/15/2025	\$5,359.46
Total	\$198,936.00					\$17,095.78

The Court finds Plaintiff's request for prejudgment interest appropriate, and recommends granting this request.

3. Costs

Plaintiff seeks costs under 28 U.S.C. § 1920. Pl. Mot. at 5. Under section 1920, a court may tax as costs clerk fees, transcript fees, printing fees, and docket fees. 20 U.S.C. § 1920. Plaintiff seeks \$405.00 for the filing fee for the Complaint and \$133.90 for the process server's fee, totaling \$538.90. Pl. Mot. at 5. This request is supported by the declaration of David M. Mannion, Plaintiff's counsel. Declaration of David M. Mannion ¶ 10 (ECF No. 12-2). Costs for filing and service fees are properly recoverable by Plaintiff. See *AMUR Equipment Finance, Inc. v. CHD Transport Inc.*, 2017 WL 4577379, at *13 (E.D. Cal. Nov. 15, 2017) (collecting cases). Accordingly, the Court recommends awarding Plaintiff \$538.90 in costs.

IV. CONCLUSION

For the reasons set forth above, it is HEREBY ORDERED that the Clerk of Court assign a District Judge to this case.

In addition, for the reasons set forth above, it is HEREBY RECOMMENDED that:

1. Plaintiff's motion for default judgment (ECF No. 12) be GRANTED;
2. Plaintiff be awarded \$198,936.00 for its principal;

3. Plaintiff be awarded \$17,095.78 in prejudgment interest; and

4. Plaintiff be awarded \$538.90 in costs.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court and serve a copy on all parties. This document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the Court within 14 days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: 07/02/25



CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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